

AMENDED IN SENATE MAY 13, 2003
AMENDED IN SENATE MARCH 26, 2003

SENATE BILL

No. 974

Introduced by Senator Alarcon

February 21, 2003

An act to add Chapter 2.3 (commencing with Section 2025) to Part 1 of Division 2 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 974, as amended, Alarcon. Public contracts: preferences: socially responsible business.

Existing law requires state agencies to give small businesses a 5% preference, and authorizes a local agency to provide for a small business preference, in contracts for construction, the procurement of goods, or the delivery of services.

Existing law also requires the state to award a 5% preference in contracts for goods to a California-based company that certifies under penalty of perjury that a certain amount of labor required to perform the contract is performed at a worksite or worksites located in a distressed area or within an enterprise zone.

This bill would require the state to award at least a 5% preference, and authorize a local agency to award a preference of at least 5%, but not more than 10%, to a California-based socially responsible business that certifies under penalty of perjury that it meets at least 10 of 13 criteria.

This bill would also make legislative declarations that promoting socially responsible businesses serves a public purpose, and that it is the intent of the Legislature to promote those businesses that honor, respect,

and safeguard human health and safety, worker dignity, environmental sustainability, and the community in which the businesses operate, by facilitating the participation of those businesses in all public contracts.

This bill would apply specified sanctions to a business that obtains a contract pursuant to a preference obtained by means of a false certification.

By expanding the scope of the crime of perjury, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 2.3 (commencing with Section 2025) is
2 added to Part 1 of Division 2 of the Public Contract Code, to read:

3

4 CHAPTER 2.3. SOCIALLY RESPONSIBLE BUSINESSES

5

6 2025. (a) The Legislature hereby declares that it serves a
7 public purpose, and is in the best interest of the state, to encourage
8 business practices that honor, respect, and safeguard the
9 environment, human rights, public health and safety, the welfare
10 of the communities of which the businesses are a part, and the
11 dignity of the businesses' employees. The Legislature also
12 declares that it serves a public purpose, and is in the best interest
13 of the state, to promote the proliferation of businesses that engage
14 in those socially responsible business practices.

15 (b) It is the intent of the Legislature to promote those businesses
16 that honor, respect, and safeguard human health and safety, worker
17 dignity, environmental sustainability, and the communities in
18 which the businesses operate, by facilitating the participation of
19 those socially responsible businesses in all public contracts.

20 2026. For purposes of this chapter, the following definitions
21 apply:



1 ~~(a) “Socially responsible business” means a business that has~~
2 ~~shown due respect for, and safeguards, the environment, human~~
3 ~~rights, public health and safety, the welfare of the community in~~
4 ~~which the business operates, and the dignity of its employees.~~

5 ~~(b)–~~

6 (a) “Local agency” has the same meaning as in Section 2000.

7 (b) “Socially responsible business” means a California-based
8 business that certifies under penalty of perjury that it meets at least
9 10 of the following 13 criteria:

10 (1) It pays a living wage to at least 75 percent of its employees.

11 (2) It provides health insurance to at least 75 percent of its
12 employees.

13 (3) It uses environmental best practices that are
14 environmentally sustainable and nonpolluting.

15 (4) It promotes recycling, either by using at least 75 percent
16 recycled materials in the business’ operations or by recycling at
17 least 75 percent of its own nonusable materials.

18 (5) Its diversity and nondiscrimination policies and practices
19 are respectful of all people, regardless of gender, ethnicity, or
20 sexual orientation. The business shall have no violations of state
21 or federal diversity and antidiscrimination laws, and diversity in
22 the business’ staff and leadership positions shall be easily
23 verifiable.

24 (6) It has not violated local, state, or federal laws, including
25 those designed to protect labor, human health and safety, and the
26 environment.

27 (7) It has a job retention program, and is able to demonstrate
28 an above average job retention level as compared to other
29 businesses within the same industry.

30 (8) It promotes or manufactures only products or services that
31 do not endanger human health or the environment.

32 (9) It contributes to the community through community service,
33 contributions, or other philanthropic activities.

34 (10) It encourages worker involvement or worker ownership in
35 the business by providing stock options to a majority of its
36 employees, providing for employee gain sharing, sharing financial
37 information with employees, or providing for employee
38 participation in management or decisionmaking.

39 (11) It provides retirement benefits to at least 75 percent of its
40 employees.

1 (12) *It practices fair trade, if engaged in foreign trade.*

2 (13) *It provides employment training, education opportunities,*
3 *and apprenticeships for members of the community.*

4 2027. (a) In order to facilitate the proliferation of socially
5 responsible businesses, the Director of General Services and any
6 other state official that enters into public contracts on behalf of an
7 entity of state government shall provide for a socially responsible
8 business preference in the award of all public contracts, as follows:

9 (1) In solicitations where an award is to be made to the lowest
10 responsible bidder meeting specifications, the preference to
11 socially responsible businesses shall be at least 5 percent of the
12 amount of the bid of the lowest responsible bidder meeting
13 specifications.

14 (2) In solicitations where an award is to be made to the highest
15 scored bidder based on evaluation factors in addition to price, the
16 preference to a socially responsible business shall be at least 5
17 percent of the highest responsible bidder's total score.

18 (3) The exact amount of preference afforded a socially
19 responsible business under this subdivision shall be determined
20 ~~using the self-certification criteria set forth in Section 2028, in a~~
21 *in a manner as the Department of General Services shall prescribe*
22 in regulations that it shall develop and adopt pursuant to this
23 section.

24 (b) (1) Notwithstanding any provision of law requiring a local
25 agency to award contracts to the lowest responsible bidder meeting
26 specifications, in order to facilitate the proliferation of socially
27 responsible businesses, a local agency may provide for a socially
28 responsible business preference of not less than 5 percent, but not
29 higher than 10 percent, to a socially responsible business in the
30 award of all public contracts.

31 (2) The exact amount of preference afforded a socially
32 responsible business under this subdivision shall be determined
33 ~~using the self-certification criteria set forth in Section 2028, in a~~
34 *in a manner as each local agency shall prescribe.*

35 (c) The preferences awarded under subdivisions (a) and (b)
36 may not be awarded to a noncompliant bidder.

37 ~~2028. Each state or local awarding body shall award a~~
38 ~~preference to a California-based socially responsible business that~~
39 ~~certifies under penalty of perjury that it meets at least 10 of the~~
40 ~~following 13 criteria:~~

1 ~~(a) It pays a living wage to at least 75 percent of its employees.~~

2 ~~(b) It provides health insurance to at least 75 percent of its~~
3 ~~employees.~~

4 ~~(c) It uses environmental best practices that are~~
5 ~~environmentally sustainable and nonpolluting.~~

6 ~~(d) It promotes recycling, either by using at least 75 percent~~
7 ~~recycled materials in the business' operations or by recycling at~~
8 ~~least 75 percent of its own nonusable materials.~~

9 ~~(e) Its diversity and nondiscrimination policies and practices~~
10 ~~are respectful of all people, regardless of gender, ethnicity, or~~
11 ~~sexual orientation. The business shall have no violations of state~~
12 ~~or federal diversity and antidiscrimination laws, and diversity in~~
13 ~~the business' staff and leadership positions shall be easily~~
14 ~~verifiable.~~

15 ~~(f) It has not violated local, state, or federal laws, including~~
16 ~~those designed to protect labor, human health and safety, and the~~
17 ~~environment.~~

18 ~~(g) It has a job retention program, and is able to demonstrate an~~
19 ~~above-average job retention level as compared to other businesses~~
20 ~~within the same industry.~~

21 ~~(h) It promotes or manufactures only products or services that~~
22 ~~do not endanger human health or the environment.~~

23 ~~(i) It contributes to the community through community service,~~
24 ~~contributions, or other philanthropic activities.~~

25 ~~(j) It encourages worker involvement or worker ownership in~~
26 ~~the business by providing stock options to a majority of its~~
27 ~~employees, providing for employee gain sharing, sharing financial~~
28 ~~information with employees, or providing for employee~~
29 ~~participation in management or decisionmaking.~~

30 ~~(k) It provides retirement benefits to at least 75 percent of its~~
31 ~~employees.~~

32 ~~(l) It practices fair trade, if engaged in foreign trade.~~

33 ~~(m) It provides employment training, education opportunities,~~
34 ~~and apprenticeships for members of the community.~~

35 ~~2029.—~~

36 2028. (a) A business that requests and is given the preference
37 provided for in Section 2027 by reason of having furnished a false
38 certification, and that by reason of that certification has been
39 awarded a contract to which it would not otherwise have been
40 entitled, shall be subject to all of the following:

1 (1) Pay to the state any difference between the contract amount
2 and what the state's cost would have been if the contract had been
3 properly awarded.

4 (2) In addition to the amount specified in subdivision (a), be
5 assessed a penalty in an amount of not more than 10 percent of the
6 amount of the contract involved.

7 (3) Be ineligible to directly or indirectly transact any business
8 with the state for a period of not less than three months and not
9 more than 24 months.

10 (b) Prior to the imposition of any sanction under this chapter,
11 the contractor or vendor shall be entitled to a public hearing and
12 to five days' notice of the time and place of the hearing. The notice
13 shall state the reasons for the hearing.

14 SEC. 2. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.

23
24 CORRECTIONS

25 Text — Pages 2 and 3.
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